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909	7590	10/05/2005	2000937US/LT/HER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			EXAMINER	
P.O. BOX 10500			MILUTINOVIC, CHARLES	
MCLEAN, VA 22102			ART UNIT	PAPER NUMBER
			2136	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/993,947

Applicant(s)

RELANDER ET AL.

Examiner

Charles Milutinovic

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/26/04, 4/4/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

1. This action is in response to application 09/993947 received on Nov. 27, 2001.
2. The IDSs of 10/16/2004 and 4/4/2003 have been received and considered.
3. Claims 1-29 are pending.

### *Claim Rejections - 35 USC § 101 & 35 USC § 112*

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 13-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 13 and 22 provides for the use of a network element, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 13 and 22 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the claim states that the network element is a “media gateway,” however there is no mention of exactly what a media gateway is in the written description.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 5,11,15, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is stated that the added frame is a “stolen speech block,” however in the art a stolen block usually refers to a block in which some or all of the data which is being transmitted is replaced with other data and the replacement flagged; while it is clearly stated in the independent claims that the frame which contains the reproduction delay is “added” to the transmitted stream. From the examination of the specification the examiner believes that the term “stolen speech block” is best interpreted as “a specially marked block.”

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11. Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially" in claims 1, 7, 13, and 22 is a relative term which renders the claim indefinite.

The term "real-time" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. In the art the term "real-time" is almost never qualified, and more substance to explain the time limitations must be incorporated into the claim if it is not in fact real-time.

12. Claims 13-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, a "network element" is being claimed, which one of ordinary skill of the art would consider to be either a single aspect of a large network or a single networking device, however the claims seem to suggest a much more confusing definition, considering that the further limitations of the claim include pieces of the telecommunication connection and packet switched connections.

### ***Claim Rejections - 35 USC § 103***

13. In regards to claims 1, 7, 13, and 22 note that the preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over ESTI (RES/TETRA/PDO; Part 1: General network design) in view of Samarakoon et al. (Encrypted Video over TETRA).

In regards to claim 1, The ESTI document contains part of the TETRA specification, and specifically shows a configuration [4.3.1, Case 3] that includes a Public Data Network [4.3.1, Case 3, PDN] and the TETRA communication link [4.3.1, Case 3, TETRA1].

What the ESTI does not teach is that the stream being transmitted over the configuration include marked frames to be added, and that the recipient MS/LS counts only the frames that are not marked as extra.

Samarakoon et al. teach an encrypted video system over TETRA, and specifically the system “marks a frame to be added [Pg. 3/2, “Frame Insertion Techniques” Paragraph 1].” As for “counting only the frames not marked as extra frames in the number of received frames,” the system of Samarakoon et al. when receiving a synchronization i.e. extra frame has “the IV of the receiver decryption unit . . . updated to the received IV.” In this case “count” is interpreted as “used as an input to the decryption mechanism,” and in the case of an inserted frame the frame does not “count” in the case of the most trivial IV schemes (i.e. picking a rand and then incrementing it) since updating would be equivalent to not incrementing the IV.

It would have been obvious for one of ordinary skill in the art to take the invention of Samarakoon et al., which operates over TETRA, and actually use it over the TETRA link component of the ESTI if video transmissions were desired.

16. In regards to claim 3, as can be seen on Pg. 121 of ESTI the TETRA protocol is easily modified to support IP. Considering the huge infrastructure already in place to support tcp/ip networks, it would

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have been ordinary to one of ordinary skill in the art to use a tcp/ip based network as the PDN, and to modify TETRA as described in ESTI Pg. 121 to support IP in order to take advantage of the infrastructure already in place.

17. In regards to claim 4, the “telecommunications connection belonging to the TETRA system” is explicitly shown in ESTI 4.3.1 Case 3.

18. In regards to claim 5, “wherein the extra frame added to increase the reproduction delay comprise a stolen speech block, and said marking is done in the stolen speech block,” the synchronization frames detailed in Samarakoon teach these features, specifically the marking being done in the added frame [Pg. 3/2 “Frame Insertion Technique” Paragraph 2]. As for the frame being a stolen speech block, please see the 112 rejections of this application.

19. In regards to claim 6, “wherein the encryption is done using a key stream segment generated using the initialization vector,” the invention of Samarakoon et al. uses output feedback mode (OFB) which requires the IV as a component of the key stream generator [Samarakoon et al., Fig. 1, Pg. 1/3 “Introduction” lines 7-10].

20. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over ESTI et al. as applied to claim 1 above, and further in view of Saltzer et al. (End-to-End Arguments in System Design).

ESTI et al. teach all the limitations of claim 1. What they do not teach is that the reproduction delay is increased.

Saltzer et al. teach that in certain circumstances, one specific example being a “speech message system,” [Pg 285, Line 11]; that “short delays in the delivery of packets to the storage medium are not particularly disruptive, so there is no longer any objection to low-level reliability measure that might introduce delay in order to achieve reliability” [Pg. 285, Lines 13-16]

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It would have been obvious for one of ordinary skill in the art to allow the delay almost inherent with pushing more data down a pipe (i.e. the added synchronization packets) to manifest as Saltzer et al. teaches is advisable. One of skill in the art would recognize that given the nature of packet-switched networks this would allow more time for packets to reach the destination and thus decrease the chance of packets being lost. The fact that our application is using video instead of audio makes this modification even more desirable, considering that the large amount of data used by a video stream in comparison with an audio stream make dropped packets an even greater likelihood.

21. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over ESTI (RES/TETRA/PDO; Part 1: General network design) in view of Samarakoon et al. (Encrypted Video over TETRA) and further in view of Saltzer et al. (End-to-End Arguments in System Design).

In regards to claim 7, The ESTI document contains part of the TETRA specification, and specifically shows a configuration [4.3.1, Case 3] that includes a Public Data Network [4.3.1, Case 3, PDN] and the TETRA communication link [4.3.1, Case 3, TETRA1], which is a packet-switched network since it falls into the RPDI (Radio Packet Data Infrastructure) boundary [4.2b, Fig. 1].

What the ESTI does not teach is that the stream being transmitted over the configuration include means for defining on the basis of the number of received frames an IV value corresponding to a frame received at the receiving end of the connection and used to decrypt the frame, or means for adjusting the reproduction delay...whereby the means for defining the IV value are arranged to count only the frames not marked as extra frames.

Samarakoon et al. teach an encrypted video system over TETRA, and specifically the system “marks a frame to be added [Pg. 3/2, “Frame Insertion Techniques” Paragraph 1].” The system possesses “means for defining on the basis of the number of received frames an IV value corresponding to a frame received at the receiving end of the telecommunications connection and used in the decryption of the



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frame” in that the IV is used in OFB mode [Fig. 1] and in the case of an inserted frame the frame does not “count” in the case of the most trivial IV schemes (i.e. picking a rand and then incrementing it) since updating would be the equivalent to not incrementing the IV.

It would have been obvious for one of ordinary skill in the art to take the invention of Samarakoon et al., which operates over TETRA, and actually use it over the TETRA link component of the ESTI if video transmissions were desired.

The system of ESTI and Samarakoon still does not teach that the system possesses means for adjusting the reproduction delay.

Saltzer et al. teach that in certain circumstances, one specific example being a “speech message system,” [Pg 285, Line 11]; that “short delays in the delivery of packets to the storage medium are not particularly disruptive, so there is no longer any objection to low-level reliability measure that might introduce delay in order to achieve reliability” [Pg. 285, Lines 13-16] i.e. if implemented in a system would be “means for adjusting the reproduction delay”

It would have been obvious for one of ordinary skill in the art to allow the delay almost inherent with pushing more data down a pipe (i.e. the added synchronization packets) to manifest as Saltzer et al. teaches is advisable. One of skill in the art would recognize that given the nature of packet-switched networks this would allow more time for packets to reach the destination and thus decrease the chance of packets being lost. The fact that our application is using video instead of audio makes this modification even more desirable, considering that the large amount of data used by a video stream in comparison with an audio stream make dropped packets an even greater likelihood.

22. In regards to claim 8, considering the motivation behind Saltzer et al. for adding a delay involves buffer control, there would be no unexpected results in moving where the delay is added to any part of the system, as long as it occurs before the data reaches the final destination.

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23. In regards to claim 9, as can be seen on Pg. 121 of ESTI the TETRA protocol is easily modified to support IP. Considering the huge infrastructure already in place to support tcp/ip networks, it would have been ordinary to one of ordinary skill in the art to use a tcp/ip based network as the PDN, and to modify TETRA as described in ESTI Pg. 121 to support IP in order to take advantage of the infrastructure already in place.

24. In regards to claim 10, the “telecommunications connection belonging to the TETRA system” is explicitly shown in ESTI 4.3.1 Case 3.

25. In regards to claim 11, “wherein the extra frame added to increase the reproduction delay comprise a stolen speech block, and said marking is done in the stolen speech block,” the synchronization frames detailed in Samarakoon teach these features, specifically the marking being done in the added frame [Pg. 3/2 “Frame Insertion Technique” Paragraph 2]. As for the frame being a stolen speech block, please see the 112 rejections of this application.

26. In regards to claim 12, “wherein the encryption is done using a key stream segment generated using the initialization vector,” the invention of Samarakoon et al. uses output feedback mode (OFB) which requires the IV as a component of the key stream generator [Samarakoon et al., Fig. 1, Pg. 1/3 “Introduction” lines 7-10].

27. Claims 13, 14, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over ESTI (RES/TETRA/PDO; Part 1: General network design) in view of Samarakoon et al. (Encrypted Video over TETRA) and further in view of Saltzer et al. (End-to-End Arguments in System Design).

In regards to claim 13, the ESTI document is contains part of the TETRA specification, and specifically shows a configuration [4.3.1, Case 3] that includes a Public Data Network [4.3.1, Case 3, PDN] and the TETRA communication link [4.3.1, Case 3, TETRA1].

Samarakoon et al. teach an encrypted video system over TETRA, and specifically the system “marks a frame to be added [Pg. 3/2, “Frame Insertion Techniques” Paragraph 1].” The system also uses OFB mode using an IV [Page 3/1 Fig. 1].

It would have been obvious for one of ordinary skill in the art to take the invention of Samarakoon et al., which operates over TETRA, and actually use it over the TETRA link component of the ESTI if video transmissions were desired.

Saltzer et al. teach that in certain circumstances, one specific example being a “speech message system,” [Pg 285, Line 11]; that “short delays in the delivery of packets to the storage medium are not particularly disruptive, so there is no longer any objection to low-level reliability measure that might introduce delay in order to achieve reliability” [Pg. 285, Lines 13-16].

It would have been obvious for one of ordinary skill in the art to allow the delay almost inherent with pushing more data down a pipe (i.e. the added synchronization packets) to manifest as Saltzer et al. teaches is advisable. One of skill in the art would recognize that given the nature of packet-switched networks this would allow more time for packets to reach the destination and thus decrease the chance of packets being lost. The fact that our application is using video instead of audio makes this modification even more desirable, considering that the large amount of data used by a video stream in comparison with an audio stream make dropped packets an even greater likelihood.

Please note the use-claim rejection in paragraph 6 of this rejection. Claim 13 reads as one long preamble, with no features of the described invention being claimed, and the above merely serves as a backdrop for analysis of the dependent claims.

28. In regards to claim 14, “wherein the network element resides in the receiving end of the packet-switched connection,” if we assert out network element to be any element part of the PDN of [4.3.1, Case 3], then it is inherent it be part of a packet-switched connection. Consider that the MS and PDN are communication via TETRA. Newton’s telecom dictionary defines a base station as “a fixed station used

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to communicate with mobile stations, most commonly handsets.” [Newton, Pg. 105] The base station that must inherently exist within the PDN can be chosen as our network element, and such a choice would teach the limitations of this claim.

29. In regards to claim 21, “wherein the network element is a media gateway,” one interpretation of media gateway supported by Newton’s Telecom Dictionary is “a fancy name for the new “central office” of the new IP-based telecom industry.” [Newton P. 524 “media gateway” lines 1-2]. Given this definition, the base station as discussed in Paragraph 28 of this office action satisfies the requirements of a central office, mainly “a third generation switch that will handle all the veracious telecom streams – from packet switched IP to traditional TDM.” [Newton P. 524 “media gateway” lines 22-24]

30. Claim 22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over ESTI (RES/TETRA/PDO; Part 1: General network design) in view of Samarakoon et al. (Encrypted Video over TETRA) and further in view of Saltzer et al. (End-to-End Arguments in System Design).

In regards to claim 22, The ESTI document contains part of the TETRA specification, and specifically shows a configuration [4.3.1, Case 3] that includes a Public Data Network [4.3.1, Case 3, PDN] and the TETRA communication link [4.3.1, Case 3, TETRA1].

What ESTI does not teach is that the network element is arranged to define on the basis the number of received frame an IV corresponding to a received frame, and that the frames added are related to increase a reproduction delay.

Samarakoon et al. teach an encrypted video system over TETRA, and specifically the system contains a network element “arranged to define on the basis of the number of received frames an IV value corresponding to a received frame and used in decrypting the frame,” [Fig. 1, “Introduction” First paragraph], and the number of received frames further plays into the decryption algorithm as defined in OFB (output feedback mode). Furthermore, the frames are marked as extra frames [Pg. 3/2, “Frame

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Insertion Techniques” Paragraph 1]. As for those frames “count[ing] in the number of received frames only the frames that are not marked as extra frames,” in this case “count” is interpreted as “used as an input to the decryption mechanism,” and in the case of an inserted frame the frame does not “count” in the case of the most trivial IV schemes (i.e. picking a rand and then incrementing it) since updating would be equivalent to not incrementing the IV.

It would have been obvious for one of ordinary skill in the art to take the invention of Samarakoon et al., which operates over TETRA, and actually use it over the TETRA link component of the ESTI if video transmissions were desired.

Saltzer et al. teach that in certain circumstances, one specific example being a “speech message system,” [Pg 285, Line 11]; that “short delays in the delivery of packets to the storage medium are not particularly disruptive, so there is no longer any objection to low-level reliability measure that might introduce delay in order to achieve reliability” [Pg. 285, Lines 13-16].

It would have been obvious for one of ordinary skill in the art to allow the delay almost inherent with pushing more data down a pipe (i.e. the added synchronization packets) to manifest as Saltzer et al. teaches is advisable. One of skill in the art would recognize that given the nature of packet-switched networks this would allow more time for packets to reach the destination and thus decrease the chance of packets being lost. The fact that our application is using video instead of audio makes this modification even more desirable, considering that the large amount of data used by a video stream in comparison with an audio stream make dropped packets an even greater likelihood.

Please note the use-claim rejection in paragraph 6 of this rejection. Claim 22 reads as one long preamble, with no features of the described invention being claimed, and the above merely serves as a backdrop for analysis of the dependent claims.

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31. In regards to claim 29, “wherein the network element is a mobile station,” ETSI 4.3.1, Case 3, TETRA1, which we are using as our network topology, explicitly includes a Mobile Station “MS” which can be chosen as our network element.

32. Claim 15-18, 20, 23-26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over ESTI et al. as applied to claims 13 and 22 above, and further in view of Saltzer et al. (End-to-End Arguments in System Design).

The invention of ESTI et al. teaches all the limitations of claims 13 and 22. What it does not explicitly teach is the extra frame added is a stolen speech block, the PDN uses IP, or that the network element is a base station.

33. In regards to claims 15 and 23, Saltzer et al. teach that in certain circumstances, one specific example being a “speech message system,” [Pg 285, Line 11]; that “short delays in the delivery of packets to the storage medium are not particularly disruptive, so there is no longer any objection to low-level reliability measure that might introduce delay in order to achieve reliability” [Pg. 285, Lines 13-16]

It would have been obvious for one of ordinary skill in the art to allow the delay almost inherent with pushing more data down a pipe (i.e. the added synchronization packets) to manifest as Saltzer et al. teaches is advisable. One of skill in the art would recognize that given the nature of packet-switched networks this would allow more time for packets to reach the destination and thus decrease the chance of packets being lost. The fact that our application is using video instead of audio makes this modification even more desirable, considering that the large amount of data used by a video stream in comparison with an audio stream make dropped packets an even greater likelihood.

34. In regards to claims 16 and 24, as can be seen on Pg. 121 of ESTI the TETRA protocol is easily modified to support IP. Considering the huge infrastructure already in place to support tcp/ip networks, it

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would have been ordinary to one of ordinary skill in the art to use a tcp/ip based network as the PDN, and to modify TETRA as described in ESTI Pg. 121 to support IP in order to take advantage of the infrastructure already in place.

35. In regards to claims 17 and 25, the “telecommunications connection belonging to the TETRA system” is explicitly shown in ESTI 4.3.1 Case 3.

36. In regards to claims 18 and 26, “wherein the encryption is done using a key stream segment generated using the initialization vector,” the invention of Samarakoon et al. uses output feedback mode (OFB) which requires the IV as a component of the key stream generator [Samarakoon et al., Fig. 1, Pg. 1/3 “Introduction” lines 7-10].

37. In regards to claims 20 and 28, “wherein the network element is a base station,” Newton’s Telecom Dictionary defines Base Station as “a fixed station used to communicate with mobile stations, most commonly handsets.” [Newton, Pg. 105] As can be seen in ESTI 4.3.1, Case 3; there exists a Mobile Station MS, and hence it is inherent that there exist a base station within the PDN which can be chosen to be the network element.

38. Claims 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over ESTI et al. as applied to claims 25, 26, 17, and 18 above, and further in view of Uhlirz (Concept of a GSM-based Communication System for High-Speed Trains).

ESTI et al. teach all the limitations of claims 25, 26, 17, and 18. What ESTI et al. does not teach is that the network element is a TETRA dispatcher workstation.

Uhlirz teaches that the one of the present communication needs of a High-Speed train communication system is “a dispatcher or local coordinator stay in touch with the personnel at the train station ... [which] is of type point-to-multipoint (trunked radio application).” [Uhlirz, II.A “Profile of present communication needs” bullet 2]

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It would have been obvious for one of ordinary skill in the art to take the communication system taught in claims 25, 26, 17, and 18 – which is a trunked radio system by definition (the TR in TETRA standing for trunked radio) – and to use it in the role Uhlriz teaches a trunked radio system is useful for, the dispatcher workstation being the workstation the dispatcher working at i.e. specifically the DTE in ESTI 4.3.1.

### *Conclusion*

39. Let it again be noted that the preamble is given no patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

40. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Milutinovic whose telephone number is (571)272-2668. The examiner can normally be reached on M-F 8:30-5.

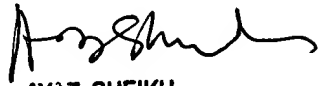
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz R. SHEIKH can be reached on (571)272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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